

PROGRAM

Mr. McCONNELL. Mr. President, a short while ago I filed a cloture motion relative to the JOBS bill. That cloture vote will occur on Wednesday of this week. The chairman will be back tomorrow to discuss the importance of this legislation, and we hope to finish the bill this week. Amendments may still be considered prior to the cloture vote, and we will continue to look for an opportunity to consider amendments that are relevant to the underlying bill. Rollcall votes are, therefore, possible during tomorrow's session. Senators will be notified when the first vote is scheduled.

Mr. REID. Mr. President, if my friend will allow me to make one brief statement, we understand the importance of the underlying bill. That is the reason we have agreed to have a list of finite amendments. It is not often we have tax bills come across the floor. This is a tax bill. We have been told on many occasions: do the overtime vote later. This bill is important. As I explained earlier today, the Senator from Iowa has withheld on a number of important pieces of legislation in an effort to move them through the Senate. But that time has come to an end. He is not agreeable to doing it at a later time anymore. We are going to have a vote on this legislation.

If this legislation is important to the administration—which I am hopeful and confident it is—we should have a vote on this overtime issue.

I repeat: The reason the administration doesn't want a vote on this overtime issue is it will pass. There is no question about it. Members in the majority and virtually everyone in the minority will vote for this most important amendment.

I hope this legislation is allowed to go forward. If it isn't, it will be directed back to the President of the United States for doing what he has done affecting the rights of millions of Americans, which is the overtime issue.

Mr. McCONNELL. Mr. President, at the risk of repeating myself, we have had this vote once. I am sure there will be other opportunities in the very near future for repetitious votes on the same issue. I know our good friends on the other side will insist on an opportunity to do that. The question is whether we should move the underlying bill now and terminate these sanctions being imposed on American businesses which cost us jobs. Jobs is an important issue here in America. We want to get this bill passed because it will preserve existing jobs and offer the opportunity for more jobs. The overtime issue, to the extent our good friends on the other side of the aisle think is a good issue, is already out there. A move is on by spending millions of dollars of George Soros' money running soft-money issue ads on this subject. I am sure those ads are not going to go away, whether or not we have this vote on this particular bill

which, of course, would be our second vote on this issue without further debating the issue.

ORDER FOR ADJOURNMENT

Mr. McCONNELL. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order following the remarks of our friend from Illinois, Senator DURBIN, for up to 20 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I know I have been given permission to speak in morning business. I have two separate issues totally unrelated, and I would like to address each of them.

The PRESIDING OFFICER. The Senator from Illinois.

MEDICAL MALPRACTICE

Mr. DURBIN. Mr. President, we face a serious medical malpractice problem in Illinois. I have had meetings in the area where I was born with doctors and most recently with hospital administrators. The recent medical malpractice insurance premium increases for this year were only—I underline "only"—7½ percent through the Illinois State Medical Society, but adjustments will follow for specialties and for experience, and for some of these doctors that rate could be increased dramatically. I have come away from the meetings convinced now more than ever that we need to do something about the medical malpractice crisis that faces America.

I understand, and I think those who follow it understand, that in my State of Illinois and in other States around the Nation medical malpractice premiums have gone up so dramatically that good doctors who have no experience of having ever been sued successfully for medical malpractice see their premiums go up by 30, 40 percent, and more. These doctors, frankly, cannot continue to practice under those circumstances and are forced into early retirement or have to transfer their practices to adjoining States with different malpractice laws.

Hospital administrators talked to me about what it means for them. When you do not have a neurosurgeon on staff at a hospital, how can you open an emergency room or give trauma care? It is a legitimate, real concern. These doctors and hospitals are facing an increased cost for malpractice pre-

miums that must be addressed as quickly as possible by either the States where these are occurring or by the Federal Government.

Most people point toward a solution that involves tort reform. I am one of them. I believe tort reform has to be part of the solution to the medical malpractice challenge we face. I also believe we have to include elements in this whole issue that address the number of medical errors committed each year. Some 98,000 Americans, it is estimated, die each year from medical malpractice—not from their disease or the illness that brought them to the doctor but simply because they were treated improperly and incorrectly.

It is an epidemic, according to some medical sources. Medical errors and medical negligence have to be reduced so the universe of bad results is reduced, as well. That will lead, of course, to fewer cases being filed and less litigation.

When it comes to malpractice itself in the courtroom, we have to find ways to make certain that only worthy, good, deserving suits go forward, to make certain those that should not be filed that may be frivolous or unnecessary are stopped early in the process before they cost both the doctors, hospitals, and their insurance companies the precious resources they are paying each year in premiums. We have to figure out a reasonable way to approach this. We can. We can do it on a bipartisan basis.

I reject the idea of caps, which is the only proposal that has been brought consistently to the Senate. To say we will sit as a jury for medical malpractice cases across America is to take away the jury system, which is basic to American government. Instead of 12 people in your neighborhood and community making the decision, we will make the decision, and we will decide the maximum amount one can recover, regardless of the injury which you, as an innocent patient, suffered.

We need to address tort reform that does not include caps on noneconomic losses. We can. I hope we can. I have said to the doctors and hospitals, I have reached out across the aisle to my friends on the Republican side to find common ground. Be prepared to make concessions on both sides, but let's address it now. We cannot allow this to continue.

The one thing we all agree on is even if tort reform is passed tomorrow, it will be years before it has any impact in reducing medical malpractice premiums. Why? Because the doctors in practice today who performed surgeries or dispensed medical services in years gone by are liable for years under statutes of limitations for what they have done in the past, and those years could be extended to a period when the actual injury is discovered which could be many years after the act was committed. Even if we change the law today, all of that past conduct and exposure to liability will be there, and

malpractice premiums will continue to be very high.

What I have proposed is that we do something immediately to provide relief to doctors and to hospitals. What I have suggested is that we consider the establishment of a tax credit and reimbursement of medical malpractice premiums for some doctors and hospitals. Senator LINDSEY GRAHAM, a Republican from South Carolina, has joined me in this amendment. Our amendment allows doctors and hospitals to claim a tax credit for a percentage of the malpractice premiums they are paying and will pay during the years 2004 and 2005. If a doctor is in a high-risk specialty with increased risk of complications, they would be eligible for a tax credit equivalent to 20 percent of their total malpractice premium. The credit would be taken for premiums up to twice the statewide average for the specialty in which the doctor practices.

Let me explain that. A doctor can deduct his medical malpractice insurance costs now from his business costs or his business revenue. We could add to that a 20-percent tax credit on top of the deduction. That would help these doctors immensely in dealing with the increase in these malpractice premiums. High-risk doctors include those in all surgical services and subspecialties, emergency medicine, obstetrics, or anesthesiology, or those doctors who do interventional work that is reflected in their malpractice premiums.

Doctors who practice in lower risk specialties—general medicine, for example—would be eligible for a 10-percent tax credit.

For-profit hospitals are eligible for a tax credit equivalent to 15 percent of their total malpractice premium, including nursing homes, as well, if they need malpractice insurance.

Those that are nonprofit institutions, hospitals and nursing homes, are eligible for reimbursement under a 2-year grant to the Health Resources Services Administration at the Department of Health and Human Services.

What we are trying to do is provide immediate relief while we work out the issues of reducing medical errors and tort reform, understanding if we pass legislation today, dealing with those two issues, tort reform and medical errors, these doctors and hospitals would still see staggering premiums for years to come. This is a responsible way to address the immediate need.

I say to my friends in the medical community, though you may not agree with me on the issue of caps, I hope you understand that even if you had your way and passed the caps limiting recovery for those who are victims of medical malpractice, the premiums would still continue to increase on your medical malpractice insurance.

This Durbin-Graham amendment, also supported by Senator PATTY MURRAY of Washington, provides immediate relief.

COLLEGE BASKETBALL

Mr. DURBIN. Mr. President, the second issue I would like to address is an issue that could not be more timely. The issue is "March Madness." Frankly, everywhere I have gone today—in the airport, while traveling, as I came back to my office—everybody is abuzz about the basketball games over the weekend.

I am happy the University of Illinois is going into Sweet 16. There have been upsets and great victories, and those who love college basketball cannot wait each year for the NCAA tournament. It is college basketball really brought home to America in a way like no other sport. Sixty-five teams start, and in the end one will be champion.

But, frankly, when we take a closer look and understand the reality of who the players are, it calls into question whether or not in many cases this is college basketball.

Let me tell you what I mean.

Mr. President, I ask unanimous consent to have printed in the RECORD today's lead editorial in the Chicago Tribune of March 22.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Chicago Tribune]

THE REAL MARCH MADNESS

If you're a basketball fan, you know how many college teams qualify each year for the NCAA men's tournament: 65. But can you guess how many schools would be playing if there was a requirement that they had to graduate at least half of their athletes?

If you guessed a third, you'd be about right.

Commentary about college sports often focuses on programs with serious shortcomings. So let it be noted that there are some universities that have exemplary records combining athletics and scholarships. Among the schools with teams in this year's tournament, Kansas graduates 73 percent of its players within six years of their original enrollment. At Dayton, 82 percent get a degree, and at Lehigh, the figure is 90 percent. Atop them all is Stanford, with a 100 percent graduation rate (and a number one seed in the tourney).

Three years ago, the Knight Foundation Commission on Intercollegiate Athletics proposed that postseason competition be limited to teams that graduate at least 50 percent of their players. But the NCAA obviously has a long way to go. Of the 65 teams playing this year, only 21 would qualify under that rule—down from 22 last year.

For that matter, 10 of the teams fail to graduate even 20 percent of their players. But they're not the worst. Commission Chairman William C. Friday, president emeritus of the University of North Carolina, noted that "four of the teams in the men's tournament failed to graduate a single athlete over the period we reviewed." He was kind enough not to identify them.

Basketball fans may be aghast to think what March Madness would look like if the commission had its way. Only three of this year's first-round games could be played if its rule were in effect—Gonzaga v. Valparaiso, North Carolina vs. Air Force, and Mississippi State vs. Monmouth. A tournament like that would make for a short, craze-free March.

But if the rule were in effect, you can be sure schools would be taking the steps need-

ed to strengthen their academic mission. They'd recruit kids capable of doing college-level work, and they'd structure their programs to assure that players devote as much time and energy to their studies as to their sport. If every school that hoped to play in the tournament had to graduate 50 percent of its players, just about every school would graduate 50 percent of its players.

That's as it should be. Most college basketball players will never play professionally. They need an education that prepares them for life after sports.

The Knight Foundation Commission goal is hardly outlandish, as the teams in the women's tournament regularly demonstrate. Of the 63 women's teams for which the commission had sufficient data to judge, only 10 failed to graduate half their players.

And there's no apparent conflict between success in the classroom and success on the court: At many of the perennial powers, such as Connecticut, Tennessee, Texas and Duke, upwards of 67 percent of players get degrees.

On the men's side, though, most schools apparently care more about winning than anything else. That approach creates far too many losers.

Mr. DURBIN. Mr. President, this editorial raises the following question:

[Can you guess how many schools would be playing [in the NCAA men's tournament] if there was a requirement that they had to graduate at least half of their athletes [in a 6-year period of time]?

If you guessed a third, you'd be right.

This article goes on to note that some universities involved in this tournament have exemplary records combining athletics and scholarship; and he names Kansas, with 73 percent of its players graduating within 6 years of their original enrollment; Dayton, 82 percent; Lehigh, 90 percent; and atop the chart—which is a university which lost yesterday—Stanford, with 100 percent.

This editorial says:

Three years ago, the Knight Foundation Commission on Intercollegiate Athletics proposed that postseason competition be limited to teams that graduate at least 50 percent of their players [within 6 years]. But the NCAA obviously has a long way to go. Of the 65 teams playing [in the tournament] this year, only 21 would qualify under that rule—down from 22 last year.

For that matter, 10 of the teams [in the NCAA tournament] fail to graduate even 20 percent of their players.

This is what commission Chairman William Friday, president emeritus of the University of North Carolina, noted:

[F]our of the teams in the men's tournament failed to graduate a single athlete over the period we reviewed.

The information here talks about the general graduation rate. We call this college basketball. But if we were to learn that there was a team headed for the Sweet Sixteen or the Final Four that did not have a single college player graduate, we would cry fraud. This is supposed to be about college athletes participating against one another. But if you have schools involved in the tournament where none—absolutely none—of the athletes involved in the basketball game are ever going to graduate, are these truly college students, is this really college basketball?